

1  
2  
3  
4  
5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT SEATTLE

8 BARBARA STENNES-COX,

9 Plaintiff,

10 v.

11 NATIONSTAR MORTGAGE, LLC,  
12 et al.,

Defendants.

C15-1682-TSZ

ORDER

13 THIS MATTER comes before the Court on defendants Nationstar Mortgage, LLC  
14 (“Nationstar”), Mortgage Electronic Registration Systems, Inc. (“MERS”), and HSBC  
15 Bank National Association’s (“HSBC”) joint motion to dismiss, docket no. 9, to which  
16 defendant Quality Loan Service Corporation of Washington (“Quality”) joins, *see* docket  
17 no. 11. Having reviewed all papers filed in support of, and in opposition to, defendants’  
18 motion, the Court enters the following order.

19 ***Background***

20 Plaintiff Barbara Stennes-Cox borrowed \$448,000 from Countrywide Bank in July  
21 2007 to purchase a home in Bellevue, Washington, providing a Deed of Trust to secure  
22 the loan. Sometime thereafter plaintiff defaulted on the loan, leading to the initiation of  
23

1 nonjudicial foreclosure proceedings. Quality, at that point the trustee, posted a Notice of  
2 Trustee's Sale on July 23, 2015. That same day, plaintiff sent a letter to defendants,  
3 among others, purporting to rescind the loan pursuant to the Truth in Lending Act.  
4 Thereafter, plaintiff filed this suit and seeking an injunction to effectuate the purported  
5 rescission.

## 6 *Discussion*

### 7 *A. Standard for Motion to Dismiss*

8 Although a complaint challenged by a Rule 12(b)(6) motion to dismiss need not  
9 provide detailed factual allegations, it must offer "more than labels and conclusions" and  
10 contain more than a "formulaic recitation of the elements of a cause of action." *Bell Atl.*  
11 *Corp. v. Twombly*, 550 U.S. 544, 555 (2007). The complaint must indicate more than  
12 mere speculation of a right to relief. *Id.* When a complaint fails to adequately state a  
13 claim, such deficiency should be "exposed at the point of minimum expenditure of time  
14 and money by the parties and the court." *Id.* at 558. A complaint may be lacking for one  
15 of two reasons: (i) absence of a cognizable legal theory, or (ii) insufficient facts under a  
16 cognizable legal claim. *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530, 534 (9th  
17 Cir. 1984). In ruling on a motion to dismiss, the Court must assume the truth of the  
18 plaintiff's allegations and draw all reasonable inferences in the plaintiff's favor. *E.g.*,  
19 *Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987). The question for the  
20 Court is whether the facts in the complaint sufficiently state a "plausible" ground for  
21 relief. *Twombly*, 550 U.S. at 570. If the Court dismisses the complaint or portions  
22  
23

1 thereof, it must consider whether to grant leave to amend. *Lopez v. Smith*, 203 F.3d 1122,  
2 1130 (9th Cir. 2000).

3 **B. Truth in Lending Act**

4 The Truth in Lending Act (“TILA”), 15 U.S.C. § 1635 *et seq.*, provides borrowers  
5 in some types of loan agreements with a right to rescind the loan in certain circumstances.  
6 TILA offers two distinct rights of rescission: (i) an unconditional right to rescind within  
7 three business days of the consummation of the loan; and (ii) a conditional right to  
8 rescind if the lender fails to provide certain required information, forms, and disclosures.  
9 *Jesinoski v. Countrywide Home Loans*, 135 S. Ct. 790, 792 (2015). Yet, even if the  
10 lender never provides the necessary information, the conditional right to rescind cannot  
11 extend more than three years beyond the consummation of the transaction. *Id.*

12 The core contention of plaintiff’s suit is that her loan agreement was immediately  
13 rescinded upon the mailing of the letter advising defendants of her exercise of her right to  
14 rescind under TILA; it was not a request to rescind. Relying on *Jesinoski*, she argues that  
15 defendants had twenty days to bring a lawsuit challenging the rescission or it became  
16 final, regardless of any possible defects. However, plaintiff reads far too much into the  
17 Court’s holding in *Jesinoski*. There, the dispute was whether a borrower was required to  
18 bring a lawsuit to establish a rescission under TILA or if advising the lender of an intent  
19 to rescind was enough. *Jesinoski*, 135 S. Ct. at 792. The Court held that TILA clearly  
20 “requires only written notice of rescission,” but stressed that “so long as the borrower  
21 notifies *within three years after the transaction is consummated*, his rescission is timely.”  
22 *Id.* (emphasis added). Nothing in the Court’s opinion suggests that lenders are forced to  
23

1 bring a lawsuit challenging a borrower's rescission within twenty days or forfeit the right  
2 to contest the validity of that rescission. Plaintiff cites an Oregon district court case to  
3 suggest that once a rescission notice is sent, the lender has an obligation to either file a  
4 suit challenging the right to rescind or to begin the unwinding process. *See Paatalo v.*  
5 *JPMorgan Chase Bank*, --- F. Supp. 3d ----, 2015 WL 7015317 (D. Or. 2015). However,  
6 in that case the borrower sent a notification of rescission within the statutory period. *Id.*  
7 at \*3. It is undisputed that the parties entered into the loan agreement on July 23, 2007.  
8 *See* Assignment of Deed of Trust, docket no. 10-1.<sup>1</sup> Plaintiff's letter to defendants  
9 seeking to rescind the loan is dated July 23, 2015.<sup>2</sup> *See* docket no. 1-1. Hence, any right  
10 plaintiff may have had to rescind the loan transaction expired, at latest, in July of 2011.  
11 The crucial difference is that the borrower in *Paatalo* timely effectuated rescission  
12 whereas plaintiff did not. Because plaintiff's attempt at rescission was void *ab initio*,  
13 there was no obligation for defendants to file a suit challenging the attempted rescission.

14 Plaintiff also argues that there is no proof that the loan transaction was ever  
15 consummated. A loan transaction is consummated for purposes of TILA when the parties  
16 enter into a binding agreement obligating the parties to lend and borrow funds. *See*  
17 *Jackson v. Grant*, 890 F.2d 118, 121 (9th Cir. 1989); 12 C.F.R. § 226.2(a)(13)  
18 ("Consummation means the time that a consumer becomes contractually obligated on a

---

19  
20 <sup>1</sup> The Court takes judicial notice of this recorded loan document. *See* Fed. R. Evid. 201.

21 <sup>2</sup> In addition, it is not enough to merely allege generally that disclosures were not made (a  
22 threshold plaintiff has not even crossed here), but a plaintiff suing under TILA's  
23 conditional right to rescind must specify what disclosure was not made. *See Thompson v.*  
*HSBC Bank USA, N.A.*, 850 F. Supp. 2d 269, 277 (D.D.C. 2012).

1 credit transaction.”). The recording of the Note and Deed of Trust conclusively  
2 establishes that the loan was consummated in April 2008. *See Young v. Nw. Tr. Servs.,*  
3 *Inc.*, 2015 WL 1062047, \*3 (W.D. Wash. Mar. 11, 2015). Further, plaintiff’s argument  
4 that the loan might never have been consummated is logically inconsistent with the  
5 existence of a suit whose very goal is to rescind a consummated loan transaction. If no  
6 loan was consummated, there is nothing to rescind.

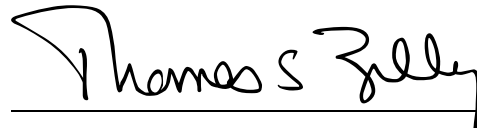
7 In sum, plaintiff’s attempt to rescind the loan transaction is, at the least, more than  
8 four years after the right to rescind expired. Because the complaint could not be cured by  
9 the allegation of other facts, this case is DISMISSED with prejudice.

10 ***Conclusion***

11 Defendants Nationstar, HSBC, MERS, and Quality’s motion to dismiss, docket  
12 no. 9, is GRANTED. Plaintiff’s complaint is DISMISSED with prejudice.

13  
14 IT IS SO ORDERED.

15 Dated this 9th day of March, 2016.

16  
17 

18 Thomas S. Zilly  
19 United States District Judge  
20  
21  
22  
23